

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ROBERT F. PANINSKI,

Plaintiff,

Civ. Action No.
5:03-CV-1135 (DEP)

vs.

ONONDAGA COUNTY DEPT. OF
CORRECTIONS, *et al.*,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF:

BLITMAN, KING LAW FIRM
Franklin Center
443 North Franklin Street, Suite 300
Syracuse, NY 13204-1415

NATHANIEL LAMBRIGHT, ESQ.
DANIEL R. BRICE, ESQ.

FOR DEFENDANT:

ONONDAGA COUNTY LAW DEPT.
John H. Mulroy Civic Center
421 Montgomery Street
10th Floor
Syracuse, NY 13202

CAROL L. RHINEHART, ESQ.

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Defendants Onondaga County Department of Corrections, and Timothy H. Cowin, its Commissioner, have moved in this case, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), for summary judgment dismissing plaintiff's claims on a variety of grounds. Dkt. No. 36. Plaintiff opposes the vast majority of defendant's motion, asserting the existence of genuine issues of material fact precluding dismissal of plaintiff's remaining claims, which arise under the Americans With Disabilities Act, as amended ("ADA"), 42 U.S.C. § 12101 *et seq.* Dkt. No. 41.

Oral argument was heard regarding the defendants' motion on April 23, 2008. At the close of argument I issued a bench decision in which defendant's motion was granted, in part, but otherwise denied based upon my finding of the existence of triable issues of material fact. Based upon the foregoing and the court's bench decision, which is incorporated herein by reference, it is hereby

ORDERED as follows:

1) Defendants' motion for summary judgment dismissing plaintiff's claims against defendant Cowin in his individual capacity is

GRANTED.

2) Defendants' motion for summary judgment dismissing plaintiff's claims against defendant Cowin in his official capacity is DENIED.

3) Defendants' motion to dismiss plaintiff's claim for punitive damages is GRANTED.

4) Defendants' motion for summary judgment dismissing plaintiff's request for injunctive relief is DENIED.

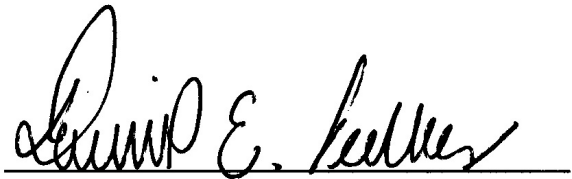
5) Plaintiff's request to strike the affidavit of Renee Taylor, submitted by defendants in support of their summary judgment motion, is DENIED.

6) Defendants' motion for summary judgment dismissing plaintiff's ADA claims, including those alleging failure to provide a reasonable accommodation, disability discrimination, and retaliation, are DENIED.

7) Defendants' motion for summary judgment dismissing plaintiff's claim of retaliation under the ADA for lack of jurisdiction, based upon his failure to file a proper complaint with the Equal Employment Opportunity Commission ("EEOC") before commencing suit, is hereby

DENIED, without prejudice, based upon the court's determination that at this juncture, affording the plaintiff the benefit of all inferences, it cannot be determined whether the retaliation claim is sufficiently related to the plaintiff's initial EEOC filing to excuse the failure to file a separate administrative complaint based upon *Butts v. City of New York Dep't of Hous. Pres. & Dev.*, 990 F.2d 1397 (2d Cir. 1993) and its progeny.

Dated: April 28, 2008
Syracuse, NY

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge